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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

YU-TUNG CHIANG et al.,

Plaintiffs and Appellants,

v.

J.B. HUNT TRANSPORT, INC. et al.,

Defendants and Appellants.

E047560, E048245, E048304

(Super.Ct.No. VCVVS042310)

OPINION

APPEAL from the Superior Court of San Bernardino County. Larry W. Allen, Judge. Affirmed.

Scolinos, Sheldon & Nevell, Harry F. Scolinos and Daniel G. Sheldon for Plaintiffs and Appellants.

Tharpe & Howell, Robert B. Salley; Fennemore Craig, William Thorpe and Todd S. Kartchner for Defendants and Appellants.

This opinion concerns consolidated appeals. Yu-Tung Chiang, Hsiu Chiao Cheng, and Harmony Chiang, a minor through her guardian ad litem Hsiu Chiao Cheng (collectively “the Chiangs”) sued J.B. Hunt Transport, Inc. (Hunt) and Hunt’s employee

Charles Tyler (Tyler) for wrongful death and negligence per se.¹ The trial court granted summary judgment in favor of Hunt and Tyler, and awarded costs to Hunt and Tyler in the amount of \$14,572. On appeal, the Chiangs contend that the trial court erred by granting summary judgment because triable issues of fact exist. In their appeal, Hunt and Tyler contend that the trial court erred by not awarding them reasonable expenses, including attorneys' fees, for the Chiangs' failure to admit the truth of various matters. (Code Civ. Proc., § 2033.420.)² We affirm the judgments.

FACTUAL AND PROCEDURAL HISTORY

In this section we present the facts and procedural history related to the Chiangs' appeal. We will present the facts and procedural history related to Hunt's and Tyler's cross-appeal within the "Discussion" section.

A. TRAFFIC ACCIDENT

The traffic accident in this case occurred on U.S. Highway 395, in Victorville. Highway 395 consists of five lanes—two lanes for northbound traffic; two lanes for southbound traffic; and a center turning lane that allows traffic to turn into driveways or streets on the opposite side of the road without stopping traffic, also known as a two-way, left turn lane (Veh. Code, § 21460.5).

¹ The Chiangs sued several other entities as well; however, we focus on the parties involved in this appeal.

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

On June 17, 2005, at approximately 3:20 p.m., Tyler was driving a tractor-trailer that did not have a cargo load attached to it.³ Hunt was the registered owner of the tractor-trailer. Tyler was traveling from Bakersfield to San Bernardino, in the southbound lanes of Highway 395. Tyler wanted to turn into the driveway of a convenience store located along the northbound lanes of the highway. Accordingly, he moved into the center two-way left turn lane. The northbound traffic was very heavy, so Tyler decided not to go to the convenience store, and he planned to merge back into the southbound traffic. Tyler's tractor-trailer was stopped in the center two-way left turn lane, as a result of waiting to turn into the convenience store driveway and then changing his mind.

At approximately the same time—3:20 p.m.—Hsiu Chiao Cheng (Hsiu) was driving northbound on Highway 395, from Los Angeles to Mammoth, in a minivan, with Yu-Tung Chiang (Yu-Tung), Tiffany Cheng (Tiffany), Lillian Syvienglam, and Harmony Chiang. Hsiu stopped the minivan at a Burger King restaurant along the southbound lanes of Highway 395. When Hsiu exited the Burger King driveway, she attempted to make a left turn towards the northbound lanes. As Hsiu crossed the southbound lanes, Hsiu's minivan was struck by a pick-up truck traveling in a southbound lane. The driver of the pick-up truck applied his brakes, but was unable to stop, and collided broadside with Hsiu's minivan. After colliding with the pick-up

³ We recognize the contradiction of referring to the vehicle as a “tractor-trailer” when a trailer was not attached to the tractor; however, for the sake of common vocabulary, we will refer to the vehicle as a “tractor-trailer,” rather than a “tractor.”

truck, the minivan spun around and collided with the rear of the tractor-trailer driven by Tyler. The tractor-trailer was still stopped in the two-way left turn lane when it was struck by the minivan. Thirteen-year-old Tiffany died as a result of the traffic accident.

Approximately one week after the accident, Hsiu spoke to San Bernardino County Sheriff's Department's Detective Mellor. Hsiu told the detective that she crossed the lanes of southbound traffic, entered the northbound lanes, and was struck by a tractor-trailer. Detective Mellor informed Hsiu that she was struck in the southbound lane of traffic, and that she hit the back of the tractor-trailer after being struck by a pick-up truck. Hsiu told the Detective that she did not recall the accident occurring in that manner, and that she believed her minivan was struck on the left rear side by a tractor-trailer.

B. DISCOVERY

In a deposition, Hsiu testified that when she was stopped in the Burger King driveway, she saw "a big space" in the two-way left turn lane, and the southbound lanes were clear of traffic, so she exited the driveway. As the deposition continued, Hsiu testified that an unidentified object was blocking her path into the two-way left turn lane, which is the reason she stopped while partially in the southbound lane of traffic. When asked if the object in the two-way left turn lane was an airplane, Hsiu responded, "I don't know what that was." When asked if the object in the two-way left turn lane was an elephant, Hsiu responded, "I don't know what that was."

Yu-Tung, Hsiu's husband, was in the passenger seat of the minivan at the time of the accident. In a deposition, Yu-Tung testified that a car was stopped in the two-way left turn lane. Yu-Tung could not recall if the car was large or small.

C. SECOND AMENDED COMPLAINT

1. *WRONGFUL DEATH / NEGLIGENCE*

In the Chiangs' second amended complaint, they alleged that Tyler operated the tractor-trailer in a negligent manner, thereby wrongfully causing Tiffany's death. The wrongful death/negligence cause of action in the second amended complaint does not include facts explaining how Tyler negligently operated the tractor-trailer, e.g., stopping in the two-way left turn lane. Rather, the cause of action consists of the following legal conclusions: "Tyler operated his vehicle in a manner that was negligent. [Hunt and Tyler] owed [the Chiangs] a duty of care. [Hunt and Tyler] breached that duty of care." (§ 425.10, subd. (a).)

2. *NEGLIGENCE PER SE*

The Chiangs also contended that Tyler and Hunt were negligent per se because Tyler violated the following statutory laws: (1) a driver shall not drive to the left of double parallel solid lines (Veh. Code, § 21460, subd. (a)); (2) no person shall make a U-turn except in an intersection or where an opening has been provided (Veh. Code, § 22102); (3) a vehicle shall not be driven in a two-way left turn lane except when making a left turn, or preparing to make a left turn, and shall not be driven in the two-way left turn lane "for more than 200 feet while preparing for and making the turn or while preparing to merge into the adjacent lanes of travel" (Veh. Code, § 21460.5, subd.

(c)); and (4) a tractor trailer must be driven in the right-hand lane of traffic (Veh. Code, § 21655, subd. (b)).⁴

D. SUMMARY JUDGMENT

1. *WRONGFUL DEATH / NEGLIGENCE*

On August 6, 2008, Hunt and Tyler filed a motion for summary judgment. In their motion, Hunt and Tyler argued that summary judgment should be granted on the wrongful death/negligence cause of action because “[n]o facts exist [to] show that [Hunt and Tyler] either breached a duty of care, or caused damages to the [Chiangs].” Hunt and Tyler asserted that in Hsiu’s and Yu-Tung’s depositions they did not identify the tractor-trailer as the object that was blocking their path.

Additionally, Hunt and Tyler contended that summary judgment should be granted because the tractor-trailer was 20 feet away from the initial point of impact. In support of the assertion that the tractor-trailer was 20 feet away, Hunt and Tyler cited to three pieces of evidence. First, Hunt and Tyler cited photographs of the accident scene, that do not include measurements, and which show the minivan next to the tractor-trailer. Second, Hunt and Tyler cited the entirety of the sheriff department’s accident investigation report. The report included a diagram of the accident scene, which reflected that the tractor-trailer was an unspecified distance away from the site of the initial impact. Third, Hunt and Tyler cited Detective Mellor’s deposition testimony in

⁴ The negligence per se cause of action in the second amended complaint does not include facts explaining how Tyler violated the foregoing statutes. Rather, the cause of action includes legal conclusions, such as Tyler and Hunt “violated the following statutes.” (§ 425.10, subd. (a).)

which the detective said, “Keep in mind, the collision with the JB Hunt truck is post collision. I mean, that’s just the tail end of the collision. It’s a post collision between the two main vehicles involved.”

Hunt and Tyler also argued that summary judgment should be granted on the wrongful death cause of action because the evidence reflected that the tractor-trailer was stopped before and during the collision.

2. *NEGLIGENCE PER SE*

Next, Hunt and Tyler argued that summary judgment should be granted in their favor on the Chiangs’ cause of action related to negligence per se because any Vehicle Code violations were not the legal cause of Tiffany’s death.

E. OPPOSITION TO SUMMARY JUDGMENT

In the Chiangs’ opposition to the summary judgment motion, they argued that the motion should be denied because the evidence reflected that Tyler was illegally driving the tractor-trailer in the two-way left turn lane, towards the path of the minivan, and ultimately blocked Hsiu’s path. The Chiangs cited to Tyler’s deposition testimony, in which he testified that he entered the two-way left turn lane in order to turn left into the convenience store parking lot. The Chiangs argued that Tyler’s testimony showed he was driving the tractor-trailer in violation of the law because (1) he must have crossed a double yellow line to enter the two-way left turn lane near the convenience store; (2) he must have traveled more than 200 feet in the two-way left turn lane, because he was not near the convenience store driveway at the time of the collision; (3) he had no lawful

purpose for being in the two-way left turn lane, because the tractor-trailer was not located across from a driveway at the time of the collision.

The Chiangs argued that the following questions must be answered by a trial on the merits: (1) Did Tyler violate the Vehicle Code by illegally crossing double yellow lines to enter the two-way left turn lane?; (2) Did Tyler violate the Vehicle Code by illegally occupying the two-way left turn lane?; (3) Was Tyler negligent for occupying the two-way left turn lane?; (4) Was Tyler's negligence a substantial factor in causing the Chiangs' injuries?; (5) Did Tyler block Hsiu's access to the two-way left turn lane?; (6) Did Tyler stop his vehicle in front of the convenience store driveway and then negligently drive in the two-way left turn lane prior to the collision occurring?

F. REPLY TO THE OPPOSITION TO SUMMARY JUDGMENT

Hunt and Tyler filed a reply to the Chiangs' opposition. Hunt and Tyler conceded that Tyler entered the two-way left turn lane and drove the tractor-trailer to the location where it was struck by the minivan. However, Hunt and Tyler argued that there was no evidence that the tractor-trailer was moving towards the path of the minivan at the time of the collision; they asserted that all the evidence reflected that the tractor-trailer was stopped before and during the collision. In support of their argument, Hunt and Tyler cited to Hsiu's response to a request for admission. The request asked Hsiu to admit that the tractor-trailer was stationary prior to the accident taking place. Hsiu wrote that she could "neither admit nor deny this request at this time. [Further, Hsiu] ha[d] made a reasonable inquiry concerning the matter and the information known or readily obtainable is insufficient to enable [Hsiu] to admit the matter." Hunt and

Tyler argued that Hsiu's inability to deny the request equated to a concession.

Additionally, Hunt and Tyler cited to the statements of three eyewitnesses who said that the tractor-trailer did not move immediately prior to the collision or during the collision.

F. RUNNELS'S DEPOSITION

On October 29, 2008, the trial court held a hearing on Hunt's and Tyler's motion for summary judgment. At the hearing, the Chiangs requested a continuance, in order to submit the deposition testimony of a witness who said that a tractor-trailer was blocking Hsiu's access to the two-way left turn lane. The trial court granted the continuance.

On October 31, the Chiangs submitted the deposition testimony of Joshua Runnels (Runnels). Runnels was a passenger in the pick-up truck that struck Hsiu's minivan. In Runnels's deposition he testified, "[W]e entered the intersection, I saw [Hsiu] at the Burger King getting ready to pull out. At that point she—from what I saw, she never looked to the left to see—to see oncoming traffic. It never appeared that, you know, that she was looking both ways to make sure nobody was coming because—and then also there was a semi in the center lane. So there was basically nowhere for her to go and she pulled out right—I mean, we passed through the intersection and she pulled out and it was—it was so fast. We slammed on the brakes and we couldn't slow down the truck in time."

As the deposition continued, Runnels testified, "[T]here was nowhere for her to go. The semi was blocking the center lane and there was—there was nowhere for her to get into—into another lane. The traffic was backed up on the northbound side and the semi was in the center lane, so there was nowhere for her to go." Runnels stated that the

tractor-trailer was located “perpendicular to where the exit is from the Burger King, like right across from it”; and he did not see the tractor-trailer move. Runnels testified that the collision involving the pick-up truck and the minivan occurred “10, 15 yards . . . past the semi.”

Hunt and Tyler filed a reply to the Chiangs’ filing of Runnels’s deposition testimony. In the opposition, Hunt and Tyler pointed out that Hsiu testified that the two-way left turn lane was clear when she exited the Burger King driveway, but suddenly an unidentified object was blocking her access to the turn lane. Hunt and Tyler noted that the Chiangs’ theory of the case was that the tractor-trailer was traveling in the two-way left turn lane and blocked Hsiu’s access to the lane, just as she crossed over the southbound lanes of traffic. Hunt and Tyler argued that Runnels’s deposition testimony supported the Chiangs’ theory that the tractor-trailer was across from the Burger King driveway; however, the Chiangs still did not have evidence that the tractor-trailer was traveling/moving in the two-way left turn lane just prior to, or during, the collision.

Hunt and Tyler also provided more pages of Runnels’s deposition transcript. In the deposition, Runnels testified that after the collision, he looked at the tractor-trailer, and it had not moved from the location it had been in prior to the accident. At the deposition, Hunt’s and Tyler’s trial counsel showed Runnels four aerial photographs of the accident scene. The photographs reflect a tractor-trailer located in the two-way left turn lane, just south of the Burger King driveway. Runnels testified that the

photographs accurately reflected the location of the tractor-trailer at the time of the accident.

H. HEARING ON THE MOTION

On November 13, 2008, the trial court held a hearing on Hunt's and Tyler's motion for summary judgment. At the hearing, the trial court found that Hunt and Tyler met their burden of proof, and that the Chiangs did not present a triable issue of fact. In regard to its ruling, the trial court said, "It appeared to the court that the evidence was clear that at the times pertinent to the accident, the truck was stopped and had been stopped for some time before the incident occurred. But like I say, it's all in your papers."

DISCUSSION

A. THE CHIANGS' APPEAL

The Chiangs contend that the trial court erred by granting summary judgment because triable issues of fact exist regarding (1) whether the tractor-trailer blocked Hsiu's path into the two-way left turn lane, and (2) whether the tractor-trailer entered and occupied the two-way left turn lane in violation of the Vehicle Code. We disagree.

Hunt and Tyler "are entitled to summary judgment only if 'all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' (Code Civ. Proc., § 437c, subd. (c).) To determine whether triable issues of fact do exist, we independently review the record that was before the trial court when it ruled on [Hunt's and Tyler's] motion. [Citations.] In so doing, we view the evidence in the light most favorable to [the Chiangs] as the

losing parties, resolving evidentiary doubts and ambiguities in their favor. [Citation.]”
(*Martinez v. Combs* (2010) 49 Cal.4th 35, 68.)

1. *WRONGFUL DEATH / NEGLIGENCE*

““The elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the pecuniary loss suffered by the heirs. [Citations.]’ [Citation.]” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 806.) “In order to establish liability on a negligence theory, a plaintiff must prove duty, breach, causation, and damages. [Citation.]” (*Conroy v. Regents of the University of California* (2009) 45 Cal.4th 1244, 1250.)

The Chiangs contend that the trial court erred by granting summary judgment because triable issues of fact exist regarding whether the tractor-trailer blocked Hsiu’s path into the two-way left turn lane. We infer that the Chiangs are asserting that a triable issue of fact exists regarding the element of causation, i.e., Hunt and Tyler caused Tiffany’s death by blocking the two-way left turn lane with the tractor-trailer.

The record reflects that the tractor-trailer was located in the two-way left turn lane, either (1) directly across from the Burger King driveway, or (2) just south of the Burger King driveway. Despite the conflicting locations, all of the evidence reflects that the tractor-trailer was stationary before and during the accident. Consequently, to the extent that the tractor-trailer was blocking Hsiu’s path, it can be inferred that it was blocking her path from the time she approached the Burger King driveway. If the tractor-trailer was blocking Hsiu’s path from the time she approached the driveway, then, as a driver entering a highway, it was Hsiu’s responsibility to yield the right-of-

way to the tractor-trailer in the two-way left turn lane. (Veh. Code, § 21804, subd. (a).) In other words, the evidence reflects that it was Hsiu's failure to yield the right-of-way that caused the collision. Therefore, we conclude that the trial court did not err by granting summary judgment in favor of Tyler and Hunt, because there is no triable issue of fact on the element of causation.

In the Chiangs' opening brief, they assert that the tractor-trailer traveled "southbound more than 200 feet in the center two-way [left] turn lane before the impact." The Chiangs' argument fails to show how the tractor-trailer caused the collision, because there is no evidence that the tractor-trailer was moving immediately prior to the collision or during the collision; all of the evidence reflects that the tractor-trailer was stationary. Consequently, we do not find the argument persuasive, because the tractor-trailer's movements in the two-way left turn lane were completed prior to the accident.

The Chiangs contend that a reasonable person could infer from the evidence that the tractor-trailer was moving in the two-way left turn lane just prior to the collision, or during the collision. Contrary to the Chiangs' position, all of the evidence reflects that the tractor-trailer was stationary prior to the collision, and during the collision:

First, Runnels testified that the tractor-trailer was stationary.

Second, Tyler told Detective Mellor that he stopped the tractor-trailer in the two-way left turn lane, in order to enter the convenience store driveway, and he was forced to wait in the two-way left turn lane due to the heavy northbound traffic.

Third, in his deposition, Detective Mellor testified that if the tractor-trailer had been moving, then it most likely would not have been involved in the accident.

Fourth, Detective Mellor's testimony is supported by the photographic evidence that shows (1) the tractor-trailer was south of the location where the pick-up truck impacted the minivan, and (2) the tractor-trailer was facing south. Consequently, if the tractor-trailer were moving, it would have continued to put greater distance between itself and the site of the initial collision.

Fifth, an independent witness told Detective Mellor that the tractor-trailer was stationary before the collision, and during the collision.

Sixth, in Hsiu's responses to Tyler's and Hunt's requests for admissions, Hsiu wrote that she could not admit or deny that the tractor-trailer was stationary prior to her exiting the Burger King driveway, because Hsiu had made "a reasonable inquiry concerning the matter and the information known [to her] or readily obtainable [was] insufficient to enable [Hsiu] to admit the matter." (§ 2033.220, subd. (c).) In other words, after a reasonable inquiry, Hsiu did not have evidence supporting a finding that the tractor-trailer was moving, i.e., evidence to deny the request for admission.

In sum, based upon the evidence we are not persuaded that a person could reasonably infer that the tractor-trailer was moving prior to the collision or during the collision.

Although not entirely clear from the Chiangs' opening brief, we infer that they are arguing the following: (1) Hsiu testified that the two-way center turn lane had a "big space", and (2) Runnels testified that the tractor-trailer was located directly across

from the Burger King driveway; therefore, it can be inferred that the tractor-trailer was moving, because the two-way center turn lane was clear, but became blocked by the tractor-trailer. The flaw in the foregoing inference is that Runnels testified the tractor-trailer did not move. Consequently, Hsiu's and Runnels's testimonies do not create an inference as to whether the tractor-trailer was moving, rather the testimonies create a dispute as to whether the tractor-trailer was stopped just south of the driveway or directly across from the driveway. In other words, the Chiangs have not offered evidence showing that the tractor-trailer was moving at, or near, the time of the accident. (See *Leslie G. v. Perry & Assoc.* (1996) 43 Cal.App.4th 472, 483 [inferences cannot be drawn from possibilities and conjecture].) Therefore, we are not persuaded that the trial court erred.

In the Chiangs' reply brief, they assert that the tractor-trailer was negligently stopped in the two-way left turn lane. In other words, the Chiangs appear to be advancing a theory that the tractor-trailer was negligent even if it were not moving. As discussed *ante*, if the tractor-trailer were stopped in the two-way left turn lane, then it was Hsiu's responsibility to yield to the tractor-trailer. (Veh. Code, § 21804, subd. (a).) Therefore, we find the Chiangs' argument unpersuasive.

In sum, the theory that Hunt and Tyler were negligent because the tractor-trailer was moving fails because there is no evidence supporting a finding that the tractor-trailer was moving; and the theory that Hunt and Tyler were negligent because the tractor-trailer was stopped fails to succeed because it was Hsiu's responsibility to yield to the traffic on the highway. (Veh. Code, § 21804, subd. (a).)

2. *NEGLIGENCE PER SE*

To establish liability pursuant to a theory of negligence per se a plaintiff must establish (1) the defendant violated a statute, ordinance, or regulation of a public entity; (2) the violation proximately caused death or injury to a person or property; (3) the death or injury resulted from an occurrence of the nature to which the statute, ordinance, or regulation was designed to prevent; and (4) the person suffering the death or injury to his person or property was in the class of people whom the statute, ordinance, or regulation was designed to protect. (Evid. Code, § 669, subd. (a).)

As discussed *ante*, the Chiangs have not shown that the location or alleged movements of the tractor-trailer caused the Chiangs' damages; rather, the evidence reflects that it was Hsiu's failure to yield to traffic that caused the collision. (Veh. Code, § 21804, subd. (a).) Consequently, the trial court did not err by granting summary judgment on the negligence per se cause of action, because the element of causation has not been established.

The Chiangs contend that Tyler's Vehicle Code violation of crossing over the double parallel solid lines (Veh. Code, § 21460, subd. (a)), to enter the two-way left turn lane, was a substantial factor in causing their damages. As discussed *ante*, all of the evidence reflects that the tractor-trailer was stationary prior to the collision and during the collision. To the extent that the tractor-trailer was blocking the Burger King driveway while stopped in the two-way left turn lane, it was Hsiu's responsibility to yield to the tractor-trailer. (Veh. Code, § 21804, subd. (a).) Consequently, we are not persuaded that Tyler's crossing of the double yellow lines was a substantial factor in

causing the Chiangs' damages, because the tractor-trailer was not moving at the time of the accident.

The Chiangs contend that Tyler driving the tractor-trailer more than 200 feet in the two-way left turn lane, in violation of Vehicle Code section 21460.5, subdivision (c), was a substantial factor in causing their damages. The evidence reflects that Tyler intended to make a left turn into the convenience store driveway, but changed his mind after waiting for the heavy northbound traffic to subside. At the time of the accident, and just prior to the accident, the tractor-trailer was stationary in the two-way left turn lane. Consequently, it does not appear that Tyler's act of driving the tractor-trailer more than 200 feet in the two-way left turn lane caused the accident, rather, it was Hsiu's failure to yield to the tractor-trailer, and other traffic, that caused the accident. (Veh. Code, § 21804, subd. (a).)

B. CROSS-APPEAL

1. *FACTS*

Tyler and Hunt moved the trial court to award them their reasonable expenses, including attorneys' fees, incurred due to the Chiangs' failure to admit the truth of various matters when requested. (§ 2033.420, subd. (a).) Tyler and Hunt argued that the Chiangs had a "wealth of information," and were asked to admit facts related to their knowledge, but instead, the Chiangs "gave testimony which can only be characterized as bizarre." As an example, Tyler and Hunt cited to the deposition testimony in which Hsiu testified that an unidentifiable object was blocking Hsiu's path into the two-way left turn lane. Tyler and Hunt asserted that they had proven the truth of the matter, i.e.,

the tractor-trailer was not the cause of the Chiangs' damages, by prevailing on the summary judgment motion via undisputed evidence. Tyler and Hunt argued that they would not have needed to participate in "protracted litigation" if the Chiangs had abandoned their unreasonable theory of the case, i.e., the mysterious object in the two-way left turn lane, and admitted the requested facts. Further, Tyler and Hunt argued that the Chiangs received \$1,200,000 by settling with other parties involved in the lawsuit,⁵ and therefore, there was no need to pursue damages against Tyler and Hunt. Tyler and Hunt sought \$60,493 in attorney fees, which resulted from depositions, written discovery, court hearings, consulting an expert, and the summary judgment motion.

The Chiangs opposed Hunt's and Tyler's motion. The Chiangs argued that Hunt and Tyler should not be awarded reasonable expenses because the Chiangs presented a plausible theory of the case that was supported by the evidence, i.e., that the tractor-trailer was moving just prior to the accident or during the accident. Additionally, the Chiangs asserted that Hunt's and Tyler's trial counsel's failure to provide a detailed accounting of the time spent proving the facts that the Chiangs allegedly refused to admit barred any recovery of expenses. Finally, the Chiangs contended that Hunt and Tyler were barred from recovering expenses due to Hunt's and Tyler's failure to move to compel further responses.

Hunt and Tyler replied to the Chiangs' opposition. In Hunt's and Tyler's response, they argued that the Chiangs gave evasive responses to Hunt's and Tyler's

⁵ Other parties named in the lawsuit include the State of California and Crew Peters Inc., d/b/a Burger King 9310.

requests for admissions. First, Hunt and Tyler cited request for admission No. 9, in which Hsiu and Yu-Tung were asked to admit that the tractor-trailer was stationary prior to the collision. Hsiu and Yu-Tung responded that they had insufficient information to admit or deny the request. Second, Hunt and Tyler cited request for admission No. 11, in which Hsiu and Yu-Tung were asked to admit that the tractor-trailer was stationary at all times relevant to this action. Hsiu and Yu-Tung responded that they had insufficient information to admit or deny the request. Third, Hunt and Tyler cited request for admission No. 14, in which Hsiu and Yu-Tung were asked to admit that Tyler did not cause any of the Chiangs' claimed damages. Hsiu and Yu-Tung denied the request. Hunt and Tyler argued that there was no basis for Hsiu and Yu-Tung to give the foregoing responses. Further, Hunt and Tyler asserted that they were not barred from recovering expenses due to not bringing a motion to compel further responses. Tyler and Hunt also argued that they provided a sufficient accounting of their expenses.

The trial court found that Chiangs' responses to Tyler's and Hunt's requests for admissions were not made in bad faith, and therefore, the trial court denied Tyler's and Hunt's motion for reasonable expenses. (§ 2033.420.) Specifically, the trial court said, "It's true I granted the motion for summary judgment, but that doesn't mean that I'm ruling that the position taken was unreasonable The parties always look at the evidence in the light most favorable to themselves, and this to my mind is not something where, . . . in bright red letters it was A. And they perhaps saw it as kind of a pinkish A and were hoping that it would come out in their favor. [¶] I certainly don't see any bad

faith or any unreasonable conduct. I think their interpretation of the evidence was wrong, but that to my mind is not the issue here. So the motion is denied.”

2. DISCUSSION

Hunt and Tyler contend that the trial court erred by denying their motion for reasonable expenses. (§ 2033.420.) We disagree.

We review the trial court’s ruling for an abuse of discretion. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1275-1276 [Fourth Dist., Div. Two].)

Section 2033.420 provides: “(a) If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, [then] the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.

“(b) The court shall make this order unless it finds any of the following: [¶] (1) An objection to the request was sustained or a response to it was waived under section 2033.290. [¶] (2) The admission sought was of no substantial importance. [¶] (3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter. [¶] (4) There was other good reason for the failure to admit.”

At the threshold, we address the issue of whether Hunt and Tyler proved that the tractor-trailer was stationary and that they were not responsible for the Chiangs’ damages. This case was dismissed following a summary judgment. The issue

determined on summary judgment is whether the plaintiff has presented sufficient evidence to raise a triable issue. (§ 437c, subd. (c).) In other words, the trial court does “not to pass upon or determine the issue itself, that is, the true facts in the case.” (*International Oil & Metal Corp. v. State* (1962) 204 Cal.App.2d 565, 568; see also *Anderson v. Liberty Lobby, Inc.* (1986) 477 U.S. 242, 249.) However, the United States Supreme Court has concluded that a summary judgment ruling is akin to a directed verdict. (*Anderson*, at pp. 250-251, 255.) We are unsure if a summary judgment ruling can be equated with a finding of fact, as Hunt and Tyler seem to contend. Nevertheless we will assume, without deciding, that the facts presented by Hunt and Tyler were found true by the trial court. In other words, we will assume that Hunt and Tyler proved that the tractor-trailer was stationary and that they were not responsible for the Chiangs’ damages.

The trial court denied Hunt’s and Tyler’s motion because it concluded that the Chiangs’ responses were not unreasonable or made in bad faith. We infer from the trial court’s statement that it found that the Chiangs had a reasonable ground to believe that they would prevail on the matter. (§ 2033.420, subd. (b)(3).)⁶ In reviewing the record, it appears that the Chiangs were under the belief that circumstantial evidence supported the inference that the tractor-trailer was moving prior to the collision, or during the collision, and therefore contributed to the Chiangs’ damages. In depositions, both Hsiu and Yu-Tung testified that an object was blocking Hsiu’s access to the two-way left turn

⁶ The notice of ruling, prepared by Hunt’s and Tyler’s trial attorney, cites section 2033.420, subdivisions (b)(3) and (b)(4) as the bases for the trial court’s ruling.

lane. The police report reflects that the tractor-trailer was in the two-way left turn lane. Based upon the foregoing evidence, the Chiangs had a skeletal framework of evidence to build upon. Consequently, a reasonable person could infer that the Chiangs believed they would be able to gather enough evidence to prove their theory—that the big rig was traveling in the two-way left turn lane and blocked Hsiu’s path. Accordingly, the trial court’s finding was not arbitrary or irrational, because the record supports a conclusion that the Chiangs had a reasonable ground to believe that they would prevail on the matter. (§ 2033.420, subd. (b)(3).) In sum, the trial court did not err.

Hunt and Tyler contend that the trial court erred because the record does not support a finding that the Chiangs had a reasonable ground to believe that they would prevail on the matter. (§ 2033.420, subd. (b)(3).) In hindsight, there is a lack of causation evidence; however, we are looking at the case after the entry of summary judgment. In November 2007, when the Chiangs completed their requests for admissions, discovery was still ongoing—depositions were taken in December 2007 and March 2008. (See *Pratt v. Union Pacific Railroad Co.* (2008) 168 Cal.App.4th 165, 180 [discussing the purpose of discovery]; see also *Emerson Electric Co. v. Superior Court* (1997) 16 Cal.4th 1101, 1107-1108 [same].) Therefore, it was reasonable for the trial court to conclude that at the time the Chiangs responded to the requests for admissions, the Chiangs could have rationally believed that they would procure sufficient evidence to prove their theory of the case. In sum, we find Hunt’s and Tyler’s argument unpersuasive.

DISPOSITION

The judgments are affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ MILLER
J.

We concur:

/s/ McKINSTER
Acting P. J.

/s/ RICHLI
J.